

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAGALIE CASTEL,

Petitioner,

-v-

ANDREW SAUL,
Commissioner of Social Security,

Respondent.

19 Civ. 5180 (PAE) (DCF)

OPINION AND ORDER

PAUL A. ENGELMAYER, District Judge:

On June 3, 2019, petitioner Magalie Castel filed this action, seeking review of the final decision of defendant Andrew Saul, the Commissioner of Social Security (the “Commissioner”). That decision denied Ms. Castel supplemental security income and disability insurance benefits under the Social Security Act, on the ground that she was not disabled under the Act. Dkt. 1. On January 6, 2020, Ms. Castel moved, under Federal Rule of Civil Procedure 12(c), for judgment on the pleadings, reversing the Commissioner’s decision and remanding for further proceedings. Dkt. 15. On March 19, 2020, the Commissioner filed a cross-motion, also pursuant to Rule 12(c), for judgment on the pleadings affirming the Commissioner’s decision. Dkt. 21.

Before the Court is the September 1, 2020 Report and Recommendation of the Honorable Debra C. Freeman, United States Magistrate Judge. The Report recommends that the Court grant Ms. Castel’s motion seeking remand for further administrative proceedings and deny the Commissioner’s cross-motion to affirm the Commissioner’s decision. Dkt. 24. The Report further recommends that, upon remand, the ALJ be directed:

(1) to develop the Record by soliciting a medical source statement, including a functional assessment, from Dr. Herivaux or another mental health provider who treated Plaintiff during the relevant period, or – should efforts to obtain such an assessment prove unfruitful – to obtain an updated consultative examination of Plaintiff;

(2) upon further development of the Record, to reevaluate the entirety of the evidence of Plaintiff's psychiatric impairments (particularly with respect to concentration, persistence, and pace, and the frequency with which Plaintiff would likely be absent from work or off-task during a workday), and to reassess Plaintiff's RFC accordingly, without relying on his own lay opinion regarding Plaintiff's functional abilities; and

(3) in reassessing Plaintiff's RFC, to consider not only the medical evidence, but also Plaintiff's subjective complaints regarding her mental impairments.

Id. The Report also stated that the parties were required to file any objections within 14 days from the date of service of the Report. *Id.* To date, the Court has received no objections.

DISCUSSION


In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). When specific objections are made, “[t]he district judge must determine *de novo* any part of the magistrate judge’s disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3); *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997). To accept those portions of the report to which no timely objection has been made, “a district court need only satisfy itself that there is no clear error on the face of the record.” *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009) (citing *Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003)); *see also Edwards v. Fischer*, 414 F. Supp. 2d 342, 346–47 (S.D.N.Y. 2006) (citation omitted).

CONCLUSION

Careful review of the thorough and well-reasoned Report reveals that there is no facial error in its conclusions. The Report, which is incorporated by reference herein, is adopted without modification. Ms. Castel's motion for judgment on the pleadings is granted and the Commissioner's cross-motion for judgment on the pleadings is denied. The Clerk of Court is directed to close this case.

The parties' failure to file written objections precludes appellate review of this decision. *See Caidor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir. 2008); *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam).

SO ORDERED.


Paul A. Engelmayer
United States District Judge

Dated: September 28, 2020
New York, New York